

TENTATIVE RULINGS for CIVIL LAW and MOTION
September 10, 2009

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6942

TENTATIVE RULING

Case: Baytel, Inc. v. Spy World, Inc. et al.
Case No. CV CV 08-1399

Hearing Date: September 10, 2009 Department Fifteen 9:00 a.m.

Defendants' demurrer to Plaintiff's First Amended Complaint is **SUSTAINED WITH LEAVE TO AMEND IN PART** as follows:

Defendants' demurrer to the first, second, third and fourth causes of action are **OVERULED**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff states facts sufficient in the First Amended Complaint to state a cause of action for breach of contract, fraud and conversion.

Defendants' demurrer to the fifth cause of action for violation of Business & Professions Code sections 17200 *et seq.* is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff failed to state facts sufficient to show that plaintiff suffered an "injury in fact" and "lost money or property as a result of such unfair competition." (Bus. & Prof. Code, § 17204.)

Defendants' objection to Plaintiff's opposition as untimely served under Code of Civil Procedure section 1005(b) is **SUSTAINED**. The Court finds that Plaintiff did not timely serve its opposition papers on Defendants. Accordingly, the Court did not consider Plaintiff's opposition in ruling on this motion. Even if the Court had considered Plaintiff's opposition, it would not have changed the Court's tentative ruling.

Plaintiffs' request for judicial notice is **DENIED**.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **DFEH v. Lightning Demolition and Hauling et al.**
Case No. CV PT 09-18

Hearing Date: **September 10, 2009** **Department Fifteen** **9:00 a.m.**

Petitioner Department of Fair Employment and Housing's "motion for respondents to be held in contempt of court and for sanctions" is **DENIED WITHOUT PREJUDICE**. The Court cannot, on *motion*, hold respondents in contempt of Court. On submission of a proper affidavit, the Court may issue an order to show cause, of which respondents are given notice, and on which an evidentiary hearing is then held. (Code Civ. Proc., §§ 1209-1218.) Petitioner fails to submit an affidavit that recites facts to support each element of an indirect contempt of this Court's February 2, 2009 order. (*Matter of Ivey* (2000) 85 Cal.App.4th 793, 798; *Arthur v. Superior Court* (1965) 62 Cal.2d 404, 407-408.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Page v. Regents of the University of California, et al.**
Case No. CV PM 08-228

Hearing Date: **September 10, 2009** **Department Fifteen** **9:00 a.m.**

Defendant Textron Inc. dba E-Z-Go's motion to compel plaintiffs' verifications to supplemental discovery is **DENIED** as **MOOT**. Plaintiffs served the verifications to the supplemental discovery on July 29, 2009.

Defendants' request for sanctions is **GRANTED**. (Code Civ. Proc., §§ 2023.010 *et seq.*) Plaintiffs and their attorney failed to meet and confer in good faith to informally resolve this dispute. Plaintiffs shall pay Defendant Textron Inc. dba E-Z-Go's attorneys' fees incurred for the preparation and filing of this motion in the amount of \$1,316.00 by September 30, 2009.

If no hearing is requested, the tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Throne v. Robinson**
Case No. CV UD 09-47

Hearing Date: **September 10, 2009** **Department Fifteen** **9:00 a.m.**

The parties and counsel are **DIRECTED TO APPEAR**.

TENTATIVE RULING

Case: **Zochlinski v. Regents**

Case No. CV PT 07-9

Hearing Date: **September 10, 2009**

Department Fifteen

9:00 a.m.

The Court again reminds the petitioners that Howard Zochlinski may not represent his co-petitioners in this or any other legal matter. (Buss. & Prof. Code, §§ 6125 and 6126.) Additionally, Mr. Zochlinski may not sign any pleading, motion or other paper filed in this matter in his co-petitioner's name. The Court does not deem any motion, brief or paper Mr. Zochlinski signed in Christopher Dietrich's name as a motion, brief or paper submitted by Mr. Dietrich.

Request to consider opposition papers that were filed late: The request, filed on May 14, 2009, that the Court consider the papers filed in opposition to the demurrer is **GRANTED**.

The Regents' third request for judicial notice: The request for judicial notice the Regents filed on August 29, 2008, is **GRANTED**. (Evid. Code, § 452, subd. (c).) The Court does not, however, take notice of the factual assertions in Barbara Horwitz' June 7, 2008, decision. (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882-883.)

Howard Zochlinski's request to file a supplemental opposition to the demurrer: The Court considered the facts alleged in Mr. Zochlinski's request and the December 15, 2004, minutes attached to his request. The request to submit supplemental papers is **DENIED**. Mr. Zochlinski has not established good cause for permitting additional papers to be filed.

The Regents' demurrer to the first amended petition: The demurrer to Writ of Mandate A is **OVERRULED**. On a demurrer, the court must take as true all of the allegations in the amended petition which are well-pleaded. (*Wong v. The Regents of the Univ. Of Calif.* (1971) 15 Cal.App.3d 823, 829.) The amended petition alleges that the respondents acted in an arbitrary and capricious manner when they refused to abide by the decision of the Representative Assembly. Petitioners allege that the respondents' actions were motivated by anti-Semitism, personal bias, and retaliation for Mr. Zochlinski's prior appeals. (*See, e.g.,* Amended Petition ¶¶ 5-6.)

The demurrer to Writ of Mandate B is **SUSTAINED WITHOUT LEAVE TO AMEND**. A writ of mandate does not lie to compel a specific legislative act. (8 Witkin, Cal. Procedure (5th ed. 2008) Extraordinary Writs, § 93, p. 983.)

The demurrer to the Writ of Prohibition is **SUSTAINED WITH LEAVE TO AMEND**. A writ of prohibition will not lie where the act complained of is ministerial. (Code Civ. Proc., § 1102.) The first amended petition alleges that the respondents' enforcement of the Representative Assembly's decision is "ministerial". (Amended Petition ¶¶ 28 and 34-36.) Even assuming that the acts complained of are judicial, the first amended petition alleges completed acts. Prohibition is not available to review completed judicial acts. (*Baker v. Municipal Court of Los Angeles Judicial Dist.* (1961) 198 Cal.App.2d 556, 557.) Petitioners do

not allege facts showing any threatened or pending judicial acts or any further judicial proceedings by the respondents.

Because the demurrer is sustained in part with leave to amend, the Court defers ruling on the request for judicial notice filed on May 8, 2009, and the papers filed in response thereto.

Request to amend the writ petition: Mr. Zochlinski's request to amend the first amended writ petition is **GRANTED**. The second amended petition must be filed **by no later than October 12, 2009**.

The Court reminds the petitioners that their petition should present a **clear and concise** statement of their claims. Although the first amended petition states that the issue in this writ petition is the enforcement of the Representative Assembly's 2005 decision to reinstate Mr. Zochlinski, the briefs filed in this matter appear to ask the Court to review the 1993 decision to disqualify Mr. Zochlinski and the denials of Mr. Zochlinski's subsequent appeals within the University system. The petitioners must specifically identify the act(s) they want this Court to review in this writ proceeding and the relief they seek in this petition. Petitioners should strive for brevity.

The motion to quash subpoenas: The Regents, Larry Vanderhoef, Jeffrey Gibeling, Joseph Kiskis and Robert Powell's motion to quash subpoenas is **GRANTED**. Mr. Zochlinski argues that oral testimony at the hearing is necessary to prove the factual misrepresentations in Barbara Horwitz' June 7, 2008, decision. The Court does not take notice of the truth of any factual assertion in Ms. Horwitz' decision. On a demurrer, the Court may only consider the face of the pleading under attack and matters outside the pleading that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) There has been no showing that any of the evidence sought to be produced at the hearing is subject to judicial notice and relevant to the demurrer. Mr. Zochlinski has not established good cause for introducing oral evidence at the hearing.

The request, in Mr. Zochlinski's opposition to the motion to quash subpoenas, that the Court take judicial notice of Case No. 93-71626 is **DENIED**. Mr. Zochlinski did not identify any portion of the court file that he wants the Court to take notice of nor establish how any portion of such file is relevant to the issues before this Court.

The motion for contempt: The motion filed on May 14, 2009, for contempt and other relief is **DENIED**. The motion was not signed. (Code Civ. Proc., § 128.7.) As the moving party, Mr. Zochlinski bears the burden of establishing the grounds for contempt. (*Ransom v. Superior Court for Los Angeles County* (1968) 262 Cal.App.2d 271, 275-276.) An affidavit stating the facts constituting the contempt was not filed. (*Arthur v. Superior Court of Los Angeles County* (1965) 62 Cal.2d 404, 408.)

Requirement for future exhibits submitted to the Court: The parties have submitted voluminous exhibits in this matter. The parties must highlight the relevant portions of all exhibits submitted to the Court in the future. The Court may deem the failure to comply with this requirement as a concession that the portions of exhibits not highlighted are not relevant to the issues presented.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Zochlinski v. Regents**
Case No. CV PT 08-3413

Hearing Date: **September 10, 2009** **Department Fifteen** **9:00 a.m.**

Motion for leave to submit supplemental papers: Because the issues of whether a “three paper rule” existed and the requirements and application of such rule are critical to the Court’s consideration of the writ in this case and to give the petitioner a further opportunity to support the contentions in his petition, the request to present supplemental papers is **GRANTED** as follows. Petitioner shall file his supplemental papers **by no later than October 1, 2009**. Respondents may file responsive papers by **no later than October 15, 2009**. Petitioner may file reply papers **by no later than October 29, 2009**. A further hearing in this case shall be set for Monday, November 16, 2009, at 10:00 a.m. in Department Fifteen.

The Court notes that by themselves, the documents attached to the motion the petitioner filed on July 28, 2009, are insufficient to establish the petitioner’s contentions regarding the “three paper rule”. For example, it cannot be determined from the face of the documents attached to the petitioner’s motion whether a student was granted a Ph.D. degree based solely on a “reprint” of three published papers. Petitioner must ensure that the record before this Court is sufficient to support his petition.

Requirement for future exhibits submitted to the Court: The parties must highlight the relevant portions of all exhibits submitted to the Court in the future. The Court may deem the failure to comply with this requirement as a concession that the portions of exhibits not highlighted are not relevant to the issues presented.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.